

wherein the processor monitors an out-of-band control channel of the cable network for information indicating that a download of data or programming is available and indicating a specified in-band channel for receiving the download of data or programming offered to said set-top terminal over said cable network, wherein said processor only accepts said download on said specified in-band channel and records said download in said memory unit when one or more predetermined criteria are satisfied, and wherein said criteria when satisfied indicates that acceptance of said download will cause a minimum of interference with said subscriber's use of said set-top terminal.

18. A set-top terminal for connecting a subscriber to a cable network, said terminal comprising:

a processor; and
a memory unit,

wherein the processor monitors an out-of-band control channel of the cable network for information indicating that a download is available and indicating a specified in-band channel for receiving the offered download , wherein said terminal occasionally receives said download over said cable network of new programming on said specified in-band channel; and

wherein following said download of programming, said processor will only execute said new programming from said download when one or more predetermined criteria are satisfied.

24. A method for minimizing interruptions to use of a set-top terminal that connects a subscriber to a cable network where said interruptions result from downloading data or programming to said set-top terminal over said cable network, the method comprising the steps of:

receiving a signal from a headend identifying a specified in-band channel on which said download is available, wherein the received signal is obtained via an out-of-band control channel of the cable network; and

accepting said download on said specified in-band channel only when one or more predetermined criteria are satisfied, said criteria when satisfied indicating that acceptance of said download will not interfere with said subscriber's use of said set-top terminal.

36. A method for implementing upgraded programming received in a set-top terminal for connecting a subscriber to a cable network, said method comprising the steps of:

receiving a signal from a headend identifying a specified in-band channel on which a download of upgraded programming is offered, wherein the received signal is obtained via an out-of-band control channel of the cable network; and

terminating execution of existing programming and commencing execution of said upgraded programming only when one or more predetermined criteria are satisfied.

REMARKS

Reconsideration and allowance are respectfully requested. Claims 1-42 are currently pending and stand rejected by the Examiner. Applicants have amended claims 1, 18, 24 and 36. No new matter has been added.

§ 103 rejections

Claims 1-4, 7-17, 21-22, 24-27, 30-36, 39, 40 and 42 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,666,293 to Metz et al. ("Metz-293") in view of U.S. Patent No. 5,978,855 to Metz et al. ("Metz-855"). Applicants respectfully traverse this rejection.